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ASTRAZENECA R&D BOSTON
35 GATEHOUSE DRIVE
WALTHAM MA 02451-1215

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OFFICE OF PETITIONS

In re Patent No. 7,528,121
Heron et al.
Issue Date: May 5, 2009
Application No. 10/539,220
Filed: June 17, 2005
Attorney Docket No. 100938-1P
US

:
: DECISION ON REQUEST FOR
: RECONSIDERATION OF
: PATENT TERM ADJUSTMENT
: AND NOTICE OF INTENT
: TO ISSUE CERTIFICATE OF
: CORRECTION
:
:

This is a decision on the petition filed on July 2, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by nine hundred forty-two (942) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein**. The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by **nine hundred thirty-five (935)** days.

The instant application is a national stage application, which was submitted under 35 U.S.C. 371 on June 17, 2005. However, June 17, 2005 is not the date used in the calculation of the patent term adjustment. The calculation of delay pursuant to 37 CFR 1.702(b) is based on the failure of the Office to issue a patent within three years after the national stage commenced under 35 U.S.C. 371(b) or (f). See 1.702(b). The priority date of this application is December 24, 2002. As the requirements for early commencement were not met, the national stage commenced in this application on June 24, 2005. Thus, "B" delay

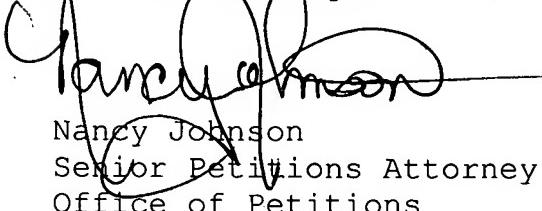
is 315 days, not 322 days, counting the number of days beginning on June 25, 2008 and ending on May 5, 2009, the date of issuance. See 1.703(b). Therefore, the patent term adjustment is 935 days, not 942 days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e) on February 12, 2009. No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **nine hundred thirty-five (935) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,528,121 B2

DATED : May 5, 2009

DRAFT

INVENTOR(S) : Heron et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 620 days

Delete the phrase "by 620 days" and insert – by 935 days--